

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LUIS GOMEZ ORTIZ,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

23-CV-8722 (PKC)

19-CR-0536-09 (PKC)

ORDER

P. KEVIN CASTEL, United States District Judge:

Movant, currently incarcerated at FCC Coleman Low, brings this *pro se* “Petition For A Writ of Habeas Corpus Under 28 U.S.C. § 2241,” challenging the legality of his sentence entered in *United States v. Rodriguez*, ECF 1:19-CR-0536, 426 (S.D.N.Y. Apr. 13, 2023). For the following reasons, the application is designated as a motion under 28 U.S.C. § 2255.

DESIGNATION OF APPLICATION AS MOTION UNDER 28 U.S.C. § 2255

Movant’s application must be construed as a motion for relief under 28 U.S.C. § 2255 because he seeks an order declaring his detention unlawful and ordering his immediate release.

See Jiminian v. Nash, 245 F.3d 144, 146-47 (2d Cir. 2001) (Section 2255 “is generally the proper vehicle for a federal prisoner’s challenge to his conviction and sentence”). If Movant does not want to pursue relief under § 2255, he must notify the Court in writing within sixty days that he wishes to withdraw the application. *See Castro v. United States*, 540 U.S. 375, 383 (2003); *Adams v. United States*, 155 F.3d 582, 584 (2d Cir. 1998) (per curiam). Movant will have one opportunity within the limitations period for a full adjudication of his claims. If Movant does not inform the Court of his intent within sixty days, the application will remain designated as a motion under 28 U.S.C. § 2255.

CONCLUSION

The Court finds that this application, notwithstanding its designation, should be construed as a motion pursuant to 28 U.S.C. § 2255. If Movant does not want to pursue relief under Section 2255, he must notify the Court in writing within sixty days that he wishes to withdraw his motion. If Movant does not inform the Court of his intent within sixty days, the application will remain designated as a motion under 28 U.S.C. § 2255, and the Court will issue an order directing the U.S. Attorney's Office for the Southern District of New York to file an answer or other pleadings in response to the motion. No answer shall be required at this time.

Because Movant has not at this time made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
October 17, 2023